

For the Middle District of Pennsylvania

Richard Wojtysek
Plaintiff

VS.

Penna. Dept. of Corrections
and

Jeffrey A Beard, Ph.D.
Kenneth Kyle,

P. Yarger,
R. Kimber, M.D.,

P. Everhart,
S. Walters,

et al
Defendants

Civil Action

No: 1:CV01-1163

ADA-RA

FILED
SCRANTON

FEB 13 2004

PER

DEPUTY CLERK

Plaintiff's Answer

To Defendants Summary Judgment - Motion
To Dismiss

Filed: 2-9-04

Respectfully,
Richard Wojtysek

5706 Glades Pike P.O. Box 631
Somerset, Pa, 15501-0636

Your plaintiff, Richard Kojczak, respectfully
 submits to this Honorable Court, his Answer
 to Defendants' Motion For Summary Judgment -
 Motion to Dismiss in Civil Action 1:01-CV-1163.

Most Respectfully,
 your plaintiff, HAS
~~EXHAUSTED~~ ADMINISTRATIVE
 REMEDIES AS TO ALL ISSUES -
 CLAIMS Before this Court in
 this Action.

Please read plaintiff's 'Amended Civil
 Action Complaint' with citations of law, and
80 Exhibits attached, filed 1-17-04 with this
 Court.

A careful examination of
 the 80 Exhibits clearly show
 your plaintiff - HAS NOTIFIED
~~ALL~~ of the defendants by LETTER, REQUEST
 SLIP, NOTE, and VERBALLY AGGRIEVED
 ALL ISSUES - CLAIMS TO ALL DEFENDANTS,
 TO THE HIGHEST LEVELS OF THE PENNA.
 DEPT. OF CORRECTIONS - EVEN NOTIFIED
 BOTH GOVERNORS OF PENNA (See 80 Exhibits) -

Even people outside the 'prisons' -
 Pa. Dept. of Correction, ~~various~~, contacted,

all the defendants concerning the issues -
claims contained in their Complaints --

ALL the defendants were MORE than informed -

~~that~~ NOTIFIED, ALL received MORE

than ADEQUATE NOTICE, ALL were

aware of plaintiff's Complaints - issues -

claims -- Camp v. Brennan, 219 F3d 219

(3d Cir. 2000) at 281 [2], Wyatt v. Leonard, 193 F3d 876

(6 Cir. 1999), Windell v. Coker, 163 F3d 887, 890 (5 Cir. 1998)

Mitchell v. Horn, 1998 W.L. 695058 #2 (E.D. Pa. Sept. 29, 1998)

Underwood v. Wilson, 151 F3d 292, 296 (5th Cir. 1998).

The exhaustion requirement is NOT jurisdictional,
therefore this Honorable Court does have the discretion
to hear plaintiff's Complaints.

Plaintiff's efforts in contacting
ALL the defendants (and more) -- see Exhibits

1 to 80 attached to Complaint with Court 1-17-04

IS SUFFICIENT TO SATISFY ANY AND ALL

EXHAUSTION REQUIREMENTS -- see Wyatt v.

Leonard, Supra. at 879 [3]

Miller v. Stanore, 636 F2d 986, 991 n.8 (5 Cir. 1981)

Ramirez v. Reno, NO. 97-7314 (3 Cir. 1997)

Malone v. Godinez, 1997 U.S. District Lexis 6201, 1997
W.L. 222, 945 (N.D. Ill. 1997).

Plaintiff continually and repeatedly
 IGNORED by ALL DEFENDANTS -

plaintiff's 'medical needs - special needs' were
 NOT provided adequate medical care. All
 defendants have unconstitutionally failed to exercise
 professional judgement, defendants have ~~been~~ clearly
 shown 'deliberate indifference' to plaintiff's 'medical
 needs - special needs'. Tarrant v. ~~to~~ and
 with intent to punish plaintiff -- see -- Sameron v.
Tomes, 783 F.Supp. 1511 (D. Mass. 1992)

These defendants are ALL LIABLE because
 they ALL KNEW, ALL WERE AWARE of facts from which
 can be drawn that substantial risk of serious harm
 exists & imminute, ALL DEFENDANTS KNEW complaints
 of plaintiff (see Exhibit 1 to 80 attached & complaint)
 ALL DEFENDANTS IGNORED and disregarded plaintiff
 ALL DEFENDANTS LIABLE -- Schmidt v. O'Dell, 64
 F.Supp.2d 1014 (D. Kan. 1999).

A Genuine issue of facts exists in this
 case (more than one) -- whether defendants failed to
 make reasonable accommodations for disabled plaintiff
 by failing to Transfer plaintiff to a facility which
 can provide for his Medical Needs & Special Needs -
 Custody status classification -- see -- Wortzjak v. Pa.
Dept. of Corrections, CA-1-01-CV-2096 (M.D. Penna.).

These genuine issues of fact are to be determined by a jury - - this precludes a summary judgment motion to dismiss in favor of these Defendants under the Americans with Disability Act - Rehabilitation Act.

Your Defendants Not only failed to accommodate for plaintiff's disabilities - - - they also failed in providing for your plaintiff what they were providing for other inmates (determination). Obtaining a shower, obtain meals, to move about the institution - to obtain suitable recreation and exercise - - - Are Basic Needs, Part of the Minimal Civilized measure of life's necessities which the Defendants are OBLIGATED to provide - - Schmidt v. O'Dell, Supra.

The defendants' deliberate indifference to plaintiff's Medical - Special Needs - Disabilities, denied plaintiff the minimal civilized measure's of life's necessities, ignored the concepts of dignity, civilized standards of humanity & decency - - Hudson v. McMillian, 112 S Ct 995 (1992).

Even with ALL the Notice to the defendants, - See Exhibits 1 to 80 in Complaint - the Defendants Failed to cure serious problems visited upon

your plaintiff by the defendants, this establishes the LIABILITY of all defendants. A history of abuse is established by the defendants, and subordinates behavior, AND FAILURE to correct establishes LIABILITY. -- Greason V. Kemp, 891 F2d 829 (11 Cir. 1990), Furndallen V. City of Cooper City, 777 F2d 1436, 1443 (11 Cir. 1985). Defendants are LIABLE. -- Beckford V. Irwin, 49 F Supp 2d 170 (W.D. N.Y. 1999).

Defendants have No immunity under American With Disabilities Act. -- Blatchford V. Native Village of Noatak, 111 S Ct 2578 (1991).

In this instant case, contested factual issues have been established which are to be decided by a jury. Defendants Summary Judgment - Motion to Dismiss must therefore be Denied.

Respectfully,

5/ Richard W. Stozak

Richard W. STOZAK AF5977
5706 Glades Pike P.O. Box 31
Somerset, Pa. 15504-0636
c/c

Filed: 2-9-04

Certificate of Service

I, Richard Wojtezak, hereby certify that I
have mailed a true and correct copy of this
'Answer' To:

Clerk of Courts
U.S. District Court
Middle District of Penna.
235 N. Washington Ave.
P.O. Box 1148
Scranton, Pa. 18501

Original plus 2 copies

Ms. Amanda Smith, Esq.
Deputy Attorney General
of Pennsylvania
15th floor, Strawberry Square
Harrisburg, Pa. 17120

1 Copy

On this 9th day of Feb. 2004.

Respectfully,

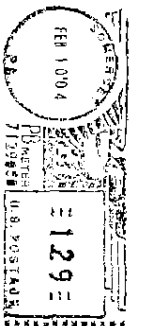
Richard Wojtezak

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Somerset, Pa. 15501-0636

c/c

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MIDDLE DISTRICT
PACIFIC DISTRICT
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A-5977

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and up

Clerk of Court
U.S. District Court
Middle District
235 N. Washington Ave.,
P.O. Box 1148
Houston, Tx. 77201

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